debtor and creditor relation.[4] On the first two theories, the question is comparatively simple; it is on the last that its discussion is most important. This is especially true in view of its application to the ordinary bank where a debtor and creditor relation admittedly exists.[5] It is conceived that there are two feasible ways, depending upon the purpose of the depositor, of effecting that object. First, it may be intended merely to give the wife a power of attorney to draw on the account for her own use as she may desire. If this power were unsupported by consideration, a mere gratuity, it would be revocable either by the donor's order or by his death.[6] But, if desired, it could be made irrevocable by securing consideration for it,[7] when a different situation would arise. A demand by a depositor on a bank creates a separate obligation on the part of the bank to the extent of the demand.[8] Consequently, the wife in exercising her power of attorney, could by each demand upon the bank create an obligation to the extent of the demand in favor of the depositor which she could enforce for her own benefit. It follows that there would be an irrevocable partial assignment, or a series of such assignments, of the whole obligation to the wife, each of which would be completed, and their number and amount determined, by her demands. Since there is consideration, there can be no question of revocation of the power of attorney, but whether that power should be held to continue beyond the death of the assignor, is a question which must depend upon the intention of the parties. Second, it may be desired to give the wife a right co-extensive with that of the husband. It is suggested that this may be accomplished by opening a joint account in the names of the husband and the wife. To secure to each the power to draw at will for his own use, a condition of the account would be that either may have the power to use their joint names in drawing against the account or proceeding with regard to it in any way. The power in the husband would be irrevocable, because it would be a condition of the wife's taking an interest; her power would be irrevocable, because coupled with her interest.[9] Upon the death of either, the total interest would necessarily survive to the other in accordance with the doctrine of survivorship in joint rights.[10] This would probably effectuate the wishes of the parties. In those states where statutes have been passed limiting the operation of the doctrine of survivorship, the situation would be changed accordingly. If it is provided that a joint interest shall go to the decedent's representative in one way or another, then the question whether, upon the death of either, the power to draw as before would continue co-extensive between the survivor and the representative of the other, would again depend upon the intention of the parties.

JURISDICTION OVER A TRUST CREATED ABROAD. — A neat question is raised when the trustees of a trust created in another jurisdiction apply to the court of their domicile for instructions concerning the administration of the trust. By what law is the validity of the provisions of the trust to be deter-

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[4] Robinson *v.* Aird, 29 So. Rep. 633 (Fla.).
[5] Bank *v.* Brewing Co., 50 Oh. St. 151.
[6] Blackstone *v.* Buttermore, 53 Pa. 266.
[7] Guthrie *v.* Wabash Ry. Co., 40 Ill. 109.
[8] Brahm *v.* Adkins, 77 Ill. 263.
[9] Dickenson *v.* Central Nat'l Bank, 129 Mass. 279.
[10] Trammell *v.* Harrall, 4 Ark. 602.

mined? And what is to be done if the trust is one which could not have been created in the country in which the instructions are sought? An express trust created by the owner of the property must be considered as an interest in the property and treated as such. If then it is a trust of land, it must be created as any other interest in land is created, in accordance with the law of the situs.[1] And if an enforceable interest is created by the law of the situs, that interest must be recognized everywhere.[2]

Beyond this point the law is far from clear. The courts in dealing with trusts of personalty seem to avoid laying down any precise or definite rule.[3] On the general principles of our law, however, it seems necessary to admit that the law of the place where it is alleged a trust has been created must determine whether a trust has ever come into existence. That is the law which must give legal effect to the acts done.[4] The question then is, what law shall govern dealings with the trust property? It used to be said, though erroneously, that the passing of title to personal property depended on the *lex domicilii* of the owner.[5] The more sound view is that the passing of title to personalty is governed by the law of the situs of the personalty at the time.[6] In the same manner it would seem to follow that the proper law for determining the operation of a trust of personal property and the effect of dealings with it, is the law of the country in which the *corpus* of the trust is held. The domicile of the equitable owner or of the legal owner cannot affect it.

A case for the application of these principles was recently presented to the Chancery Division of the High Court. A marriage settlement was made in Scotland on the marriage there of a Scotchwoman and a domiciled Englishman. Personalty was given in trust to English trustees, with an alimentary non-alienable provision for the husband if he survived. This form of provision was good by the law of Scotland, but not by that of England. The husband survived, having previously mortgaged the provision. In a question as to the rights of the mortgagees, the court decided in their favor. *In re Fitzgerald*, [1903] 1 Ch. 933. The court put its decision on the ground that the validity must be determined by the law of England, and by that law the provision against alienation was void as against public policy. The court was not clear as to the reason for settling this question by the law of England, but talked vaguely of the law of the intention of the parties. But the intention of the parties cannot determine the law by which a transaction is to be governed. It may, however, be looked to for the purpose of interpreting the transaction.[7] Taking that rule, it would seem to be possible to sustain the decision in the case on the principles above set forth. The fact that an English settlement of other property was made at the same time and that the property was placed in the hands of the same trustees, Englishmen, may reasonably be construed to show, not that the parties intended a settlement in Scotland to be governed by English law, but that the parties intended the trust to be an English trust; that the *corpus* should be held in

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[1] Acker *v.* Priest, 92 Iowa 610.
[2] Siebberas *v.* De Geronimo, Jour. du Palais 1895, IV. 28.
[3] See Fowler's Appeal, 125 Pa. St. 388; First Nat'l Bk. *v.* Nat'l Broadway Bk., 156 N. Y. 459.
[4] See 16 HARV. L. REV. 58.
[5] Edgerly *v.* Bush, 81 N. Y. 199.
[6] Cammell *v.* Sewell, 5 H. & N. 728; Green *v.* Van Buskirk, 5 Wall. (U. S.) 307, 7 Wall (U. S.) 139.
[7] 16 HARV. L. REV. 58.

England and there administered. Clearly on that ground, the *corpus* being within the jurisdiction of the English law, that law alone could give effect to any dealings with it. It is to be regretted that the court did not take this opportunity to enunciate the principles of law governing this interesting class of cases.

LIABILITY FOR NEGLIGENT INJURY RESULTING IN SUICIDE. — The development of the modern law of negligence has given rise to many interesting decisions. A late Massachusetts case furnishes an example of this class. The plaintiff's testator committed suicide while suffering from insanity induced by an injury which the defendant had negligently inflicted. The disease had destroyed the power of the deceased to discriminate between right and wrong, but he was still able to know what he wished to do, and to act towards that end. The court, following Scheffer *v.* Washington, etc., R. R. Co.,[1] where the facts seem identical, held that the defendant was not liable for the testator's death, since it was caused by the testator's own act and not by the defendant's negligence. *Daniels* v. *New York, etc., R. R. Co.*, 67 N. E. Rep. 424 (Mass.).

There should be no difficulty in sustaining the plaintiff's suit on grounds of legal cause. A man is liable for the probable results of his negligence.[2] Insanity would seem sufficiently probable as a result of severe shock and bodily injury; and suicide is such a sufficiently common result of insanity like that in the present case, that it may be justly urged that where the latter is probable, the former is. Nor does the fact that the deceased's death is the immediate result of an act other than the defendant's break causal connection if it is admitted to be a probable result.[3] But if it can be shown that the deceased was himself at fault, then, although the defendant's negligence caused his death, the plaintiff cannot recover.[4] It would seem, then, that the decision of the principal case must rest upon the ground that the plaintiff was at fault when he killed himself.

It is difficult, however, to show any fault on the part of the deceased. A man is generally responsible for his acts, that is, for those things which he chooses to do. But where a man whose mind is so crippled by loss of moral judgment that he cannot distinguish between right and wrong chooses that which in his normal state he never would have chosen, it is unjust to hold him responsible, in the sense that he is at fault, merely because a normal man would have been at fault had he so chosen. This is supported by the criminal decisions, which make knowledge of right and wrong the test of fault.[5]

This reasoning may seem at variance with the rule that an insane person is liable for his torts,[6] for it might seem to follow from that rule that an insane person in doing intentional damage is always at fault. But the cases which established that rule went upon the theory that he who is damaged ought to be recompensed.[7] An insane defendant was held liable, though

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1 105 U. S. 249.
2 Milwaukee, etc., R. R. Co. *v.* Kellogg, 94 U. S. 469.
3 Lane *v.* Atlantic Works, 111 Mass. 136.
4 Locker *v.* Damon, 17 Pick. (Mass.) 284; Nashua, etc., Co. *v.* Worcester, etc., R. R. Co., 62 N. H. 159.
5 United States *v.* Young, 25 Fed. Rep. 710.
6 McIntyre *v.* Sholty, 121 Ill. 660.
7 Holmes on Com. Law, 84.